

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 14 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GUADALUPE PENA-CARRILLO,

Defendant - Appellant.

No. 05-30362

D.C. No. CR-04-06001-WFM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Wm. Fremming Nielsen, Senior Judge, Presiding

Submitted March 10, 2006**
Seattle, Washington

Before: O'SCANNLAIN, SILVERMAN, and GOULD, Circuit Judges.

Defendant-Appellant Guadalupe Pena-Carrillo appeals a 77-month sentence imposed following his guilty plea to one count of illegal re-entry after deportation. *See* 8 U.S.C. § 1326. We omit the relevant facts as they are known to the parties.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

To the extent Pena-Carrillo argues that the district court erred because it did not recite on the record its analysis of each and every factor under 18 U.S.C. § 3553(a), this argument is foreclosed by our recent holding in *United States v. Knows His Gun*, No. 04-30302, 2006 WL 335799 (9th Cir. 2006). We reject Pena-Carrillo’s argument because the “requirement [that the sentencing court consider the § 3553(a) factors] does not necessitate a specific articulation of each factor separately, but rather a showing that the district court considered the statutorily-designated factors in imposing a sentence.” *Id.* at *3.

Pena-Carrillo also appears to argue that the district court erred because it failed to “provide a record reflecting that appropriate factors were considered.” Specifically, Pena-Carrillo objects to his sentencing because the district court did not articulate its consideration of the alleged disparity among defendants sentenced in certain districts under fast-track sentencing programs and defendants sentenced in districts without such programs. *See* 18 U.S.C. § 3553(a)(6). We reject this claim as well. The existence of fast-track programs in other districts is irrelevant to Pena-Carrillo’s sentencing because his prior felonies include sexual crimes against children, and defendants with a record of such crimes are generally ineligible for fast-track sentencing. *See United States v. Banuelos-Rodriguez*, 215 F.3d 969, 971 (9th Cir. 2000) (en banc); *see also Implementing Requirements of*

the PROTECT Act: Hearing Before the U.S. Sentencing Comm’n 10 (Sept. 23, 2003) (statement of Marilyn L. Huff, J., S.D. Cal.), *available at* http://www.ussc.gov/hearings/9_23_03/092303PH.pdf; *id.* at 18–19 (statement of Steven Hubachek, Asst. Fed. Pub. Defender, S.D. Cal.). Pena-Carrillo thus raises no disparity “among defendants with similar records,” and the district court need not have articulated on the record its consideration of a patently irrelevant § 3553(a) factor.

In general, the record clearly establishes that the district court considered the statutorily-designated § 3553(a) factors in imposing a sentence. *See Knows His Gun*, 2006 WL 335799 at *3; *United States v. Menyweather*, 431 F.3d 692, 696 (9th Cir. 2005). It also establishes that the district court considered the § 3553(a) factors in deciding that Pena-Carrillo’s sentence should run consecutive to his existing state sentences. *See United States v. Fifield*, 432 F.3d 1056, 1064 (9th Cir. 2005). Moreover, the district court fulfilled its obligation to provide a reasoned explanation for its sentencing decision sufficient to facilitate appellate review. *See Menyweather*, 431 F.3d at 701.

AFFIRMED.